

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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TRACY S.,

Plaintiff,

v.

Civil Action No.  
3:24-CV-542 (DEP)

FRANK BISIGNANO,  
Commissioner of Social Security,<sup>1</sup>

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

LACHMAN, GORTON LAW FIRM  
P.O. Box 89, 1500 East Main Street  
Endicott, NY 13760-0089

PETER A. GORTON, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.  
OFFICE OF GENERAL COUNSEL  
6401 Security Boulevard  
Baltimore, MD 21235

FERGUS KAISER, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

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<sup>1</sup> Plaintiff's complaint named Leland Dudek, in his official capacity as the Acting Commissioner of Social Security, as the defendant. On May 18, 2025, Frank Bisignano took office as the Commissioner of Social Security. He has therefore been substituted as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, and no further action is required in order to effectuate this change. See 42 U.S.C. § 405(g). The clerk is respectfully directed to amend the court's records to reflect this change.

## ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of a partially unfavorable administrative determination by the Commissioner of Social Security (“Commissioner”), pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.<sup>2</sup> Oral argument was heard in connection with those motions on May 29, 2025, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner’s determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

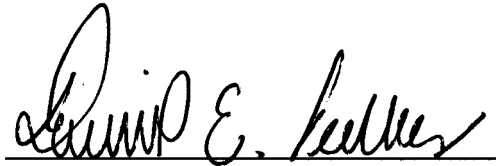
After due deliberation, and based upon the court’s oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

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<sup>2</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at certain relevant times, and thus is not entitled to benefits under the Social Security Act for that period, is AFFIRMED.
- 3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: June 20, 2025  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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TRACY SWAN,

Plaintiff,

-v- 24-cv542

LELAND DUDEK,

Defendant.

\*\*\*\*\*

TRANSCRIPT OF TELECONFERENCE  
BEFORE THE HONORABLE DAVID E. PEEBLES  
May 29, 2025

FOR THE PLAINTIFF:

LACHMAN, GORTON LAW FIRM  
BY: Peter A. Gordon, Esq.  
1500 East Main Street  
Endicott, New York 13760

FOR THE DEFENDANT:

SOCIAL SECURITY ADMINISTRATION  
BY: Fergus J. Kaiser, Esq.  
6401 Security Boulevard  
Baltimore, Maryland 21235

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1 THE COURT: Thank you. Let me begin by  
2 thanking both of you for excellent presentations. Once  
3 again you presented an interesting case involving an  
4 interesting question of medical improvement and the  
5 burden to be applied in deciding a case of medical  
6 improvement in a single decision.

7 I have before me -- before I address the  
8 merits, let me make sure that I broach the subject of  
9 consent. When this case was filed, it was originally  
10 assigned to Magistrate Judge Christian F. Hummel. The  
11 consent form that was signed by Attorney Gordon on  
12 behalf of the plaintiff consented to Judge Hummel's  
13 jurisdiction.

14 I will ask now whether the plaintiff consents  
15 to having me, to whom the case has been transferred,  
16 hear and decide the case with direct appeal to the  
17 Second Circuit Court of Appeals?

18 MR. GORTON: We consent.

19 THE COURT: Thank you.

20 THE COURT: Thank you.

21 Plaintiff has commenced this proceeding  
22 pursuant to 42 United States Code, Section 405(g) to  
23 challenge a partially unfavorable determination  
24 concluding that the plaintiff was disabled from  
25 November 2, 2003, the alleged onset date included in her

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1 application for benefits, to August 13th, 2009, but  
2 experienced medical improvement and therefore was no  
3 longer disabled effective August 14th, 2009.

4 The background is as follows, and I will not  
5 go into extensive detail that I think is unnecessary for  
6 my determination.

7 Plaintiff was born in September of 1969, is  
8 currently 55 years of age. She lives in Conklin,  
9 New York, and is a high school graduate. Plaintiff  
10 stopped working on November 2, 2003.

11 Plaintiff suffers from asthma as well as  
12 porphyria, which I understand is a rare disorder  
13 resulting from a buildup of natural chemicals called  
14 porphyrins in the body. Porphyrins are necessary to  
15 make heme, part of the hemoglobin and hemoglobin is a  
16 protein in red blood cells carrying oxygen to the body's  
17 organs and issues.

18 Prophyria involves high-level buildups of  
19 porphyrins. They can cause major problems including  
20 mainly in the nervous system and skin.

21 There are generally two types of prophyrias.  
22 Acute prophyria, mainly affecting the nervous system,  
23 and cutaneous prophyria, mainly affecting the skin,  
24 although some types of prophyrias affect both nervous  
25 system and the skin. Some of the symptoms of porphyria

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1 include abdominal pain, skin rash, and nausea.

2           Procedurally, the plaintiff applied for  
3 Title II benefits protectively on June 24th, 2001,  
4 alleging onset date of November 2, 2003, and at 309 of  
5 the administrative transcript alleging that she suffers  
6 from porphyria, hemochromatosis, and asthma.

7           A hearing was conducted on March 17th, 2023,  
8 by Administrative Law Judge Jeremy Eldred to address  
9 plaintiff's applications for benefits.

10           Judge Eldred issued an unfavorable --  
11 partially unfavorable decision on May 1, 2023, as I  
12 indicated previously, finding disability for a closed  
13 period ending August 13th, 2009.

14           On March 15th, 2024, the Social Security  
15 Administrative Council denied plaintiff's application  
16 for review. There was new evidence submitted in  
17 conjunction with the application for review but it was  
18 deemed not to be relevant to plaintiff's claim; that's  
19 at page 2 of the administrative transcript.

20           On April 19, 2024, this action was commenced  
21 and is timely.

22           In his decision, ALJ Eldred applied the  
23 five-step initial sequential test that we are all  
24 familiar with for determining disability, concluding  
25 disability that ended on August 13th, 2009.

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1           He then turned to the eight-step medical  
2     improvement test and concluded that plaintiff was no  
3     longer disabled effective August 14th, 2009, based upon  
4     improvement of symptoms with serial phlebotomies, or  
5     drawing of blood.

6           This case is subject to the Court's limited  
7     review of determining whether correct legal principles  
8     were applied and whether substantial evidence, defined  
9     as such relevant evidence as a reasonable person would  
10    conclude sufficient to support a fact is -- was --  
11    supports the determination, it was a standard that was  
12    articulated and explained by the Second Circuit Court of  
13    Appeals in *Brault v Social Security Administration*  
14    *Commissioner*, 683 F.3d 443 from 2012, and later  
15    reiterated in several cases, including *Schillo v*  
16    *Kijakazi*, 31 F.4th 64 from the Second Circuit Court of  
17    Appeals 2022.

18           Plaintiff's contentions in this case are  
19    threefold: She cites an error in finding medical  
20    improvement and no severe impairment after August 14th,  
21    2009. She claims that there was error in evaluation of  
22    the medical opinions including of Dr. Khalil; and  
23    thirdly, an error in failing to proceed through the full  
24    eight-step test for medical improvement by not  
25    conducting an RFC assessment and going through Steps 7

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1 and 8 which essentially mirror Steps 4 and 5 of the  
2 sequential evaluation.

3 The regulations in this case provide that  
4 after a commissioner makes a finding of disability, the  
5 finding will be evaluated from time to time to determine  
6 if the individual is still eligible for benefits, 42 USC  
7 Section 423(f) and 20 CFR Section 404.1589.

8 Obviously the normal context in which medical  
9 improvement appears is after a decision has been made  
10 finding disability and a subsequent review yields a  
11 finding of medical improvement. Intellectually, I think  
12 there's an argument to be made that this case could be  
13 addressed fully using the step -- five-step sequential  
14 determination. It's a different situation, however, and  
15 there's no Second Circuit guidance speaking to whether  
16 the same analysis applies in a single decision such as  
17 we're now presented with.

18 But absent Second Circuit guidance, I will  
19 look to cases from this Court that show that in a  
20 situation like we find ourselves in, the medical  
21 improvement test should apply; *Hicks v Social Security*  
22 *Commissioner*, 2015 Westlaw 58385 from the Northern  
23 District of New York, January 5, 2015, Footnote 4 in  
24 particular; also, *Dunford v Commissioner of Social*  
25 *Security*, 2023 Westlaw 2242083 from the Northern

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1 District of New York, February 27, 2023.

2 The test for finding medical improvement is in  
3 part governed by 20 CFR Section 404.1594. Under that  
4 test, medical improvement is defined as follows:

5 Medical improvement is any decrease in the medical  
6 severity of your impairments which was present at the  
7 time of the most recent favorable medical decision that  
8 you were disabled or continued to be disabled.

9 A determination that there has been a decrease  
10 in medical severity must be based on improvement in the  
11 symptoms, signs, and/or laboratory findings associated  
12 with your impairments.

13 The eight-prong test for determining whether  
14 there is continuing disability or instead medical  
15 improvement is as follows:

16 One, determine whether the individual is  
17 engaging in substantial painful activity. Two, if  
18 they're not, whether the claimant has an impairment or  
19 combination of impairments which meets or equals the  
20 list of impairments set forth in the commissioner's  
21 regulations.

22 Three, if he or she does not, determine  
23 whether there has been medical improvement shown by  
24 decrease in medical severity. Four, if there has been  
25 medical improvement, determine whether the medical

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1 improvement is related to the individual's ability to do  
2 work in that it results in an increase in the claimant's  
3 capacity to perform basic work activities.

4 Five is not relevant to this case. It  
5 addresses certain exceptions.

6 Six, if the medical improvement is related to  
7 the ability to do work, determine whether the  
8 individual's current impairments in combination are  
9 severe.

10 Seven, if one or more impairment is severe,  
11 the decisionmaker then assess the individual's ability  
12 to perform in substantial gainful activity by assessing  
13 his or her residual functional capacity, or RFC.

14 And eight, if the individual cannot perform  
15 his or her past relevant work -- part of seven is  
16 determining whether past relevant work can be performed  
17 based on the RFC. But eight, if the past relevant work  
18 cannot be performed, there must be an assessment then of  
19 whether the claimant can perform other work existing in  
20 significant numbers in the national economy, 20 CFR  
21 Section 404.1594(f).

22 As can be seen from this discussion, benefits  
23 can be terminated if substantial evidence shows that  
24 medical improvement restores the claimant's ability to  
25 work; *Michael M. v Commissioner of Social Security*, 2019

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1 Westlaw 530801 from the Northern District of New York,  
2 February 11, 2019. That is also established under  
3 *Deronde v Astrue*, 2013 Westlaw 869489 from the Northern  
4 District of New York, February 11, 2013.

5 So although the burden clearly is on the  
6 commissioner when deciding medical improvement, the case  
7 law is clear that a determination of medical improvement  
8 and termination of benefits can be upheld if substantial  
9 evidence supports the determination. The burden clearly  
10 is on the commissioner at the outset in *Denise C. v*  
11 *Kijakazi*, 2023 Westlaw 6065949, September 18, 2023, and  
12 *Michael M*, as I indicated previously, stands for that  
13 proposition.

14 One of the issues addressed in *Denise C.*,  
15 which I cited a moment ago, is whether medical  
16 improvement can be shown through treatment records and  
17 the answer in that case at least was yes, and I think  
18 that that is entirely consistent with the regulations  
19 defining medical improvement.

20 The basis for the finding of disability from  
21 the date of onset until the end of the closed period was  
22 that plaintiff's condition meets or equals listing 7.18  
23 of the results of the disabling condition set forth in  
24 the commissioner's regulations known as the listings.

25 Under 7.18, which is entitled Repeated

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1 Complications of Hematological Disorders, it shows that  
2 to meet the listing, you must establish certain  
3 complications and there are examples given, and those  
4 complications must result in marked limitations of  
5 either activities of daily living, of maintaining social  
6 functioning, or in completing tasks in a timely manner  
7 due to the deficiencies in concentration, persistence,  
8 or pace.

9           The term marked is defined in  
10 Section 7.00(g)(4) of part 404 subpart P, Appendix 1 of  
11 the commissioner's regulations. It is defined to mean  
12 that the symptoms and signs of your hematological  
13 disorder interfered seriously, and that is in italics,  
14 with your ability to function.

15           Going through the sequential tests that I have  
16 outlined, the commissioner at Step 1 found that  
17 plaintiff had not engaged in substantial gainful  
18 activity during the period from August 14th, 2009, until  
19 the date of decision. At Step 2 he found that  
20 plaintiff's condition does not meet or equal listing  
21 7.18 and substantial evidence, as I elaborated more  
22 fully, probably supports that determination.

23           At Step 3, the administrative law judge found  
24 there's been medical improvement and substantial  
25 evidence based on my review of the treatment records in

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1 particular supports that.

2 Step 4, clearly the improvement relates to  
3 plaintiff's ability to work. Step 5 is not applicable.  
4 Step 6 requires a determination of whether plaintiff  
5 suffers from a severe medically determinable impairment,  
6 which is defined kind of backwards in the regulations,  
7 specifically, 20 CFR Section 404.1522, which is not a  
8 severe impairment and provides as follows:

9 An impairment or a combination of impairments  
10 is not severe if it does not significantly limit your  
11 physical and mental ability to do basic work activities  
12 which are defined in subpart B of that regulation to  
13 include physical functions, capacity for seeing, hearing  
14 and speaking, understanding, carrying out and  
15 remembering simple instructions, use of judgment,  
16 responding appropriately to supervision, coworkers and  
17 usual or work situations, and dealing with changes in a  
18 routine setting.

19 The case law indicates that the Step 6  
20 determination of whether the medically determinable  
21 impairment is severe essentially tracks Step 2 of the  
22 five-step sequential analysis.

23 When my reading of *Colvin* 2016 Westlaw 447715  
24 from the Northern District of New York, February 4,  
25 2016, and *Michael M.* that I previously cited, also

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1 indicates that. Again, clearly it is the commissioner's  
2 burden at this juncture.

3 Step 3 -- I'm sorry. Step 2, whether  
4 sequential evaluation the -- requires a determination of  
5 whether the impairment reaches a threshold of severity  
6 where it significantly limits the physical and mental  
7 ability to perform basic work activities, 20 CFR  
8 Section 404.1522.

9 The requirement is de minimis, intended only  
10 to screen out the truly weakest of cases; *McIntyre v*  
11 *Colvin*, 758 F.3d 146, Second Circuit 2014. However, the  
12 mere presence of a disease or impairment or establishing  
13 the person has been diagnosed or treated for a disease  
14 or impairment is not by itself sufficient to render a  
15 condition severe; *Nedzad O. v the Commissioner of Social*  
16 *Security*, 577 F.Supp. 3d 37, the discussion appears at  
17 43 to 44 of that decision, and it's from the Northern  
18 District of New York 2021 from District Judge Hurd.

19 One of the exhibits in the record is an  
20 opinion and also testimony, sworn testimony from  
21 Dr. Khalil, plaintiff's oncologist. In the testimony  
22 which was taken I believe on March 31, 2023, Dr. Khalil  
23 describes porphyria and the symptoms it can cause,  
24 including headaches, nausea, vomiting, skin rash,  
25 inkiness and abdominal pain. At 277, he notes

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1 that the impairment is chronic and cannot be cured.

2 The plaintiff has suffered a -- has challenged  
3 the administrative law judge's analysis of Dr. Khalil's  
4 decisions. The discussion of the doctor's opinions  
5 appears at pages 29 and 30 of the administrative  
6 transcript.

7 Under the regulations which took effect  
8 for applications for benefits filed after March 27,  
9 2017, the administrative law judge must consider whether  
10 a medical opinion is persuasive by primarily considering  
11 whether the opinion is supported by and is consistent  
12 with the record in the case, 20 CFR Section 404.1520(c).

13 The ALJ must articulate if his or her  
14 determination as to how persuasive he or she finds all  
15 of the medical opinions and explain how he or she  
16 considered the supportability and consistency of those  
17 opinions.

18 In this case, the opinion of Dr. Khalil was  
19 found to be persuasive for the period prior to  
20 August 13th, 2009, but not persuasive thereafter, and  
21 the ALJ concluded that after August 13th, 2009, the  
22 claimant has not had any medically determinable severe  
23 impairment or combination of impairments which meets the  
24 12-month durational requirement.

25 I agree with the commissioner that it

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1 certainly appears that in determining persuasiveness,  
2 the administrative law judge did consider the  
3 supportability and consistency elements that are  
4 required under the regulations. Whether or not they  
5 were specifically stated, I nonetheless find that a  
6 searching review of the record reveals that the medical  
7 opinion regulations were not violated; *Camille v Colvin*,  
8 652 Federal App'x 25 in the Second Circuit, 2016.

9 I also find that the determination medical  
10 improvement is -- has been met. We have repeated  
11 phlebotomists, which is, as I understand it, a blood  
12 draw, but medical records show that plaintiff's  
13 treatment has reflected -- has resulted in improvements  
14 of symptoms. I've looked at 14F, which is records from  
15 Endless Mountain Health Systems; 12F, emergency  
16 department visit; 16F, which is -- consists of treatment  
17 records from Broome Oncology, April of 17, 2009, until  
18 July 21, 2021, and again, 24F Endless Mountain Health  
19 Systems.

20 The Broome County -- the Broome Oncology  
21 records reveal that without periodic phlebotomies,  
22 plaintiff's condition seems to flare. At 744, for  
23 example, which is from a treatment of April 16, 2015,  
24 plaintiff noted that she had skin rash, hot flashes, and  
25 headache but had not had a phlebotomy over the past

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1 year, and there are multiple, multiple indications of  
2 improvement of symptoms with periodic phlebotomies.

3 For example, in January, March and May of 2021  
4 at 780 to 782 of the administrative transcript,  
5 plaintiff notes significant skin rash redress with  
6 phlebotomy every two months. That appears also at  
7 page 934 of the administrative transcript.

8 So, in conclusion, I find that  
9 the administrative law judge's determination of medical  
10 improvement and that plaintiff's condition for medically  
11 determinable impairment was no longer severe effective  
12 August 14, 2009, is supported by substantial evidence  
13 and because that finding was made at Step 6, there was  
14 no need to address Steps 7 and 8 of the sequential  
15 evaluation including the need to formulate an RFC.

16 So I will grant judgment on the pleadings to  
17 the defendant, order dismissal of plaintiff's complaint,  
18 and affirm the commissioner's determination in this  
19 matter.

20 Thank you, both. I hope you have a wonderful  
21 afternoon.

22 MR. KAISER: Thank you, your Honor.

23 MR. GORTON: Thank you, your Honor.

24 (Proceeding concluded.)

\* \* \* \* \*

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C E R T I F I C A T I O N

I, Lisa L. Tennyson, RMR, CSR, FCRR, Official Court Reporter, in and for the United States District Court for the Northern District of New York, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Lisa L. Tennyson

Lisa L. Tennyson, RMR, RPR, FCRR

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